

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

RED BARN MOTORS, INC., PLATINUM
MOTORS, INC., MATTINGLY AUTO
SALES, INC., AND YOUNG EXECUTIVE
MANAGEMENT & CONSULTING
SERVICES, INC., INDIVIDUALLY
AND ON BEHALF OF OTHER MEMBERS
OF THE GENERAL PUBLIC SIMILARLY
SITUATED

PLAINTIFFS,

CASE NO.

VERSUS

1:14-CV-01589-TWP-DKL

COX ENTERPRISES, INC., COX
AUTOMOTIVE, INC., NEXTGEAR
CAPITAL, INC. F/K/A DEALER
SERVICES CORPORATION, SUCCESSOR
BY MERGER WITH MANHEIM AUTOMOTIVE
FINANCIAL SERVICES, INC., AND
JOHN WICK

DEFENDANTS.

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TRANSCRIPT OF THE 30(b)(6) DEPOSITION OF:
RED BARN MOTORS, INC.,
TAKEN ON BEHALF OF THE DEFENDANTS THROUGH THE
TESTIMONY OF DONALD RICHARDSON, IN HIS INDIVIDUAL
AND CORPORATE CAPACITY, REPORTED IN THE ABOVE
ENTITLED AND NUMBERED CAUSE BY BRITTANY E. VIDRINE,
CERTIFIED COURT REPORTER FOR THE STATE OF
LOUISIANA.

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REPORTED AT THE OFFICES OF:
LUGENBUHL, WHEATON, PECK, RANKIN & HUBBARD
9311 BLUEBONNET BOULEVARD, SUITE A
BATON ROUGE, LA 70810

COMMENCING AT 10:40 A.M. ON DECEMBER 15TH, 2016.

1 specifically say it in the question.

2 A. Okay.

3 MR. AIREY: And are you doing this
4 as an individual capacity on this? I
5 think all of them Devon answered, so...

6 MS. LEDBETTER: Yeah. I guess
7 that -- to the extent it's not responsive
8 to the topics.

9 BY MS. LEDBETTER:

10 Q. So you said Devon is or was the GM of Red
11 Barn, right?

12 A. Yes.

13 Q. How often did you interact with him as
14 GM?

15 A. At a minimum, weekly. We'd talk on the
16 telephone or we'd visit at the house.

17 Q. Do you have an office at the dealership?

18 A. No.

19 Q. How often do you go down to the
20 dealership?

21 A. Less often, generally, than once a month.
22 I did not involve myself with the various
23 day-to-day operations. I would ask him what -- how
24 things are going. I would go online and check the
25 banking account from time to time. But as far as

1 day-to-day stuff, I didn't -- I didn't go down
2 there.

3 Q. And was it Devon that was running the
4 day-to-day stuff?

5 A. Yes.

6 Q. Who is responsible for making sort of
7 bigger decisions about the business?

8 MR. AIREY: Object to the form.

9 A. What do you mean "bigger decisions"?
10 BY MS. LEDBETTER:

11 Q. Like, for example, entering contracts or
12 changing the strategy of, you know, types of cars
13 you're going to sell, things like that.

14 A. I would do that in consult with Devon and
15 Dan.

16 Q. Devon has been with Red Barn since the
17 beginning, right?

18 A. Yes.

19 Q. Has Dan been with Red Barn since the
20 beginning?

21 A. No.

22 Q. How long has he been with Red Barn?

23 A. He was with us for awhile, probably in
24 2012, and then he left, and then after the
25 bankruptcy he came back with us again. So that

1 would have been probably in '14.

2 Q. And when he was with you in 2012, was
3 that just for like a year, or had he been with you
4 prior to 2012?

5 A. He had not been with us before.

6 Q. When did Red Barn first start doing
7 business with NextGear -- or DSC at the time?

8 A. I think that was in the summer of 2011
9 just after we were a year old, I think.

10 Q. And was it Devon that made the first
11 contact with somebody from DSC?

12 MR. AIREY: Object to the form.

13 A. I think that Devon was the first one that
14 talked to someone from DSC; however, I'm not sure
15 that he made the -- the initial contact. I think
16 he was contacted, if I'm not mistaken.

17 BY MS. LEDBETTER:

18 Q. Did you ever meet with anybody from DSC?

19 A. Yes. I met with Stuart LeBauve at the
20 Red Barn offices for him to explain how the
21 floorplan program worked.

22 Q. Do you know whether Devon had already
23 talked to Stuart LeBauve at that point?

24 A. Yes.

25 Q. When did you meet with Stuart, if you

1 remember?

2 A. Well, it would have been before the
3 contract was signed, maybe a month or six weeks or
4 so.

5 Q. So you met him before actually signing
6 the contract?

7 A. Yes.

8 Q. Do you know what Stuart's role was at
9 DSC?

10 A. He was just the local sales guy, as far
11 as I knew.

12 Q. In that first meeting, what did he tell
13 you about the floorplan?

14 A. He gave me a very broad stroked
15 explanation of the function of the floorplan in the
16 overall dealership -- an overall purchase of cars
17 for the dealership. I do not remember the details
18 of the conversation at all. I know Devon was
19 anxious to try to get a floorplan program so that
20 we could expand our inventory. I was a little
21 hesitant. And so he arranged the meeting between
22 LeBauve and me and Devon to get some further
23 insights into what they did and how they operated
24 and so forth. As it turned out, I didn't get
25 enough information.

1 Q. Were you familiar with floorplans before
2 this meeting?

3 A. No.

4 Q. So you never had one before, for example?

5 A. No.

6 Q. Have you ever heard of them before?

7 A. Yes.

8 Q. When did you hear about them?

9 A. When I was a salesman in the car
10 business.

11 Q. So you were generally familiar with the
12 concept?

13 MR. AIREY: Object to the form.

14 A. I don't think familiar would be a proper
15 term. Aware may be a better term.

16 BY MS. LEDBETTER:

17 Q. You knew that there were things out there
18 called floorplans?

19 A. Yes.

20 Q. Do you remember whether you discussed
21 with Stuart the interest that would be charged on a
22 floorplan?

23 A. No.

24 Q. No, you didn't discuss it, or, no, you
25 don't remember?

1 A. I don't remember what the particulars
2 were of what we discussed. The only thing about
3 the interest that I recall is that Devon told me it
4 was going to be four and a half percent, which
5 turned out to be inaccurate.

6 Q. So you don't remember any discussion
7 about when interest would begin to accrue, right?

8 A. No.

9 Q. No, you don't remember?

10 A. I don't remember.

11 Q. In that first meeting, did you discuss
12 the curtailment fees that would be charged on the
13 floorplan?

14 A. I don't recall that we did.

15 Q. Are you familiar with curtailment fees
16 now?

17 A. Yes. Devon raised the term later, and I
18 asked what is that. So LeBauve didn't tell me
19 enough about it for me to know what it was. If he
20 mentioned it at all, I don't remember.

21 Q. Do you have any documents or records or
22 notes of that meeting that would refresh your
23 memory of what you discussed?

24 A. No. Unfortunately, all of my documents
25 with Red Barn were lost in the flood, as well as

1 the documents of the bankruptcy.

2 Q. Did you have any other meetings with
3 Stuart after that first meeting?

4 A. Not that I recall. I met him once or
5 twice, but we didn't have any discussions.

6 Q. Is it fair to say that at that first
7 meeting with Stuart LeBauve about maybe a month or
8 so before you signed the floorplan agreement was
9 the only time that you had a substantive
10 conversation with Stuart about the floorplan?

11 A. That was the only time, to the best of my
12 recollection.

13 Q. Of course. I'm going to show you a
14 document that was previously marked in Devon's
15 deposition as Exhibit 5.

16 A. Yes. July --

17 Q. So this is a series of documents that I
18 guess make up the floorplan. Does this refresh
19 your memory at all of when you might have met with
20 Stuart and had that conversation with him?

21 A. This document doesn't.

22 Q. Or the dates on the document?

23 A. Well, the date on the document says July,
24 so it would have had to have been before that,
25 maybe June, maybe early July. I don't remember.

1 Q. And I just want to walk through and make
2 sure these are your signatures. I think they are.
3 But since you're here, I guess I'll ask you. So on
4 this first page of the DSC floorplan application,
5 is that your signature on it?

6 A. Yes.

7 Q. And is the information on that
8 application correct -- was it correct at the time,
9 to the best of your knowledge?

10 MR. AIREY: Other than objecting
11 to -- that there's blackout on it, that
12 probably wasn't there at the time, but...

13 MS. LEDBETTER: Right.

14 A. The address is 26007. I always referred
15 to it as 26 James Bond. That's the way I
16 remembered it.

17 BY MS. LEDBETTER:

18 Q. That's a good way to remember.

19 A. You will never forget that now.

20 Q. So all of the information on the
21 application looks right?

22 A. It looks correct, yes.

23 Q. And the next few pages --

24 A. No, it's not correct. It says a hundred
25 percent -- a hundred percent ownership, and that

1 was not correct.

2 Q. It should be...

3 A. It should be 50/50 between me and my
4 wife. But if I was a hundred percent owner and --
5 community property states she'd still be half
6 owner, so...

7 MS. LEDBETTER: Is this a community
8 property settlement?

9 MR. AIREY: Yes.

10 THE WITNESS: Am I right?

11 MS. FELDER: You were right,
12 correct.

13 THE WITNESS: So even that is --
14 reasonably correct, okay?

15 BY MS. LEDBETTER:

16 Q. Okay. So the next few pages are the
17 Demand Promissory Note and Security Agreement, and
18 I believe the signature for that is on page
19 NG_003569. And you signed that as president and as
20 guarantor, right?

21 A. Yes.

22 Q. That's your signature?

23 A. (No response.)

24 Q. And another page, over on 3571, that's
25 the term sheet for the floorplan, and that's your

1 signature on that as well?

2 A. Yes, that's my signature and initials.

3 Q. All right. The next page is the Power of
4 Attorney on page 3572, and that's your signature as
5 well?

6 A. Yes.

7 Q. The next document is an Individual
8 Personal Guarantee, and it ends on page 3575. And
9 that's your signature?

10 A. Yes.

11 Q. And on the next page, which is the
12 Contract Quick Facts, are those your initials --

13 A. Yes.

14 Q. -- and then your signature on the back?

15 A. Yes. And there's Stuart LeBauve's
16 signature.

17 Q. When you signed these documents that
18 we've just gone through, was Stuart there at the
19 time?

20 A. No.

21 Q. How did you get these?

22 A. Well, I don't remember Stuart being there
23 at the time. He may have been, but I don't
24 remember him being there. I -- he may have been to
25 instruct me where I need to sign or initial. I

1 that would override it.

2 Q. Like a later contract or something.

3 A. No. We never had a later contract.

4 Q. Or like a cancellation or...

5 A. I don't recall signing any other
6 documents.

7 Q. And did you understand that the
8 Individual Personal Guarantee meant that you
9 personally were on the hook for any debt that Red
10 Barn had to DSC?

11 A. Yes.

12 Q. Did you understand that DSC had a
13 security interest in the vehicles that Red Barn
14 floorplanned with DSC?

15 A. I understood that DSC had a security
16 interest in the cars they floorplanned. I did not
17 understand that they had a claim, or whatever you
18 would call it, for stuff that they did not
19 floorplan.

20 Q. And what's your understanding of what a
21 security interest is?

22 A. That was collateral to them for what they
23 loaned us, as it were, to pay the auction.

24 Q. And so your understanding was that DSC
25 had a right to repossess the vehicles that they

1 floorplanned if Red Barn were to default?

2 A. Yes.

3 Q. But you did not at the time understand
4 that DSC -- or you did not understand at the time
5 whether DSC had a right to repossess other vehicles
6 and property if Red Barn defaulted to DSC?

7 A. That's correct.

8 Q. And after signing the DSC floorplan, did
9 Red Barn also enter a floorplan agreement with AFC?

10 A. Yes.

11 Q. Was that -- did Red Barn enter the
12 floorplan with AFC around the same time as with DSC
13 or much later?

14 A. Trick question. It was after. I don't
15 recall how long after.

16 Q. Do you know what Red Barn's line of
17 credit was with DSC? Does two hundred thousand
18 dollars sound right?

19 A. No. This -- I looked at this
20 (indicating), and it says two hundred thousand
21 dollars.

22 Q. And does that sound right to you?

23 A. Yeah.

24 Q. Was the floorplan -- or the line of
25 credit with AFC, was that around the same amount?

1 A. No, it was less.

2 Q. It was less?

3 A. I don't know exactly how much, but I know
4 it was less. AFC was less inclined to open a
5 floorplan account with a dealer until they had a
6 little bit more experience than DSC required. I
7 don't know how -- when we did the one with AFC. I
8 don't have any idea.

9 Q. And my understanding from Devon London's
10 deposition is that those were the only two
11 floorplans that Red Barn had; is that right?

12 A. That's correct.

13 Q. So Red Barn never had a floorplan with
14 Manheim Automotive Financial Services?

15 A. No.

16 Q. Do you know how AFC charged interest on
17 their floorplan?

18 A. Not directly. Indirectly I heard -- so
19 this is hearsay right off the bat, right?

20 Q. Yeah.

21 A. -- that they immediately sent a check to
22 the auction when you bought the car. Don't ask me
23 what "immediate" means, and don't ask me if that's
24 actually correct or not, because I don't know.

25 Q. Who did you hear that from?

1 A. I heard it from Devon. I don't know who
2 Devon heard it from.

3 Q. Did you personally ever communicate with
4 anybody from DSC other than Stuart LeBauve?

5 A. Yes.

6 Q. Who did you talk to?

7 A. A guy named Roger whoever. That was
8 after we had the difficulty.

9 Q. Any idea what his last name might be?

10 A. Devon's deposition contains his last
11 name, but I -- I'm not sure. I think it might have
12 been Tate, T-A-T-E, but I'm not sure.

13 Q. And you talked to him after the
14 bankruptcy?

15 A. No, after we couldn't pay the floorplan
16 and they picked up their cars. And then in an
17 attempt to avoid bankruptcy, I tried to work out an
18 arrangement to pay off everybody. And he was the
19 one I talked to, and he was far less than
20 cooperative.

21 Q. Do you know what his position was with
22 DSC?

23 A. No.

24 Q. Was he local or in Indianapolis?

25 A. He wasn't in Indianapolis. I think he

1 might have been in Alabama, but I don't know that
2 for sure.

3 Q. Did you ever talk to him personally or
4 just over the phone?

5 A. No, I never talked to him. If he walked
6 in the door, I wouldn't know who he was.

7 Q. So you talked to him over the phone?

8 A. Phone.

9 Q. And was that in like the March 2013
10 timeframe?

11 A. In that general timeframe.

12 Q. Did you ever talk to anybody else from
13 DSC other than Stuart and Roger?

14 A. I talked to somebody in corporate, but I
15 don't have a clue what their name was.

16 Q. When was that?

17 A. In that same timeframe.

18 Q. In the March 2013 timeframe?

19 A. Yeah. We had a large receivable on buy
20 here pay here, and I thought that if I could
21 persuade the creditors to accept payments over a
22 year that we could pay everybody what we owed them
23 and avoid the expense of a bankruptcy. Most
24 creditors -- all of the unsecured creditors were
25 willing to do that. After they picked up the cars,

1 in my mind, AFC and DSC were unsecured. DSC, as it
2 turns out, was not unsecured in their minds, and
3 they had absolutely no interest, whatever, in
4 working out anything.

5 Q. So you just said in your mind AFC and DSC
6 were unsecured after they had picked up the cars.
7 Can you explain a little bit what you mean by that?

8 A. Sure. The car was their security. When
9 they picked it up, they were unsecured.

10 Q. Because they had -- they had their
11 security?

12 A. They had their security.

13 Q. There was nothing else --

14 A. They picked up their security and --
15 balance was unsecured in my mind.

16 Q. Because in your mind, there was nothing
17 else that they had a right to --

18 A. Right.

19 Q. -- take as security? So during the time
20 that Red Barn was doing business with DSC before
21 this -- the events in March 2013 or so, was Stuart
22 LeBauve the only person that you talked to?

23 A. Yes.

24 Q. And I guess I should have asked, did you
25 ever talk to Stuart LeBauve after that first

1 meeting in 2011 and before the events in March
2 2013?

3 A. Other than just to shake hands with him
4 when he was out at the -- he would conduct some of
5 the audits for DSC and make sure that we had all of
6 our cars on the lot. And I met him once or twice
7 and shook hands with him while he was doing that.
8 But as far as discussions, there were no further
9 discussions.

10 Q. And when you say lot audit, was Stuart
11 doing a collateral audit to check the collateral on
12 Red Barn's lot?

13 A. Yes.

14 Q. And he was --

15 A. The cars.

16 Q. He was confirming that the cars were
17 there?

18 A. Yeah. The cars that they had
19 floorplanned were there or had been sold and he
20 would look at the paperwork to see if they had been
21 sold there.

22 Q. Did anybody else ever do those lot audits
23 other than Stuart?

24 A. I don't know. I wasn't there for, by
25 far, most of them.

1 Q. But you never met anybody other than
2 Stuart --

3 A. No.

4 Q. -- doing them? Are you familiar with
5 something called the KO book?

6 A. The what?

7 Q. The KO book?

8 A. You mean, "KO"?

9 Q. Uh-huh.

10 A. I didn't know it existed until I read
11 Devon's deposition.

12 Q. Okay. So until -- so prior to filing
13 this lawsuit, for example --

14 A. I heard of the "blacklist," but I never
15 heard of the term "KO book."

16 Q. So what's your -- what's your
17 understanding of the blacklist?

18 A. That DSC and maybe AFC, I don't know,
19 would put your name on a list of names that was not
20 eligible to finance cars on their floorplan and the
21 auction was not to sell to you. That was my
22 understanding of it. If your name was on that
23 book, the auction was absolutely not to sell cars
24 to you.

25 Q. And the auction was not to sell cars to

1 you on the floorplan or at all?

2 A. At all.

3 Q. Where did that understanding come from?

4 A. Devon was telling me what the blacklist
5 was. I had never heard of the blacklist before he
6 told me. He said, well, we can't -- let's go to
7 Hammond and buy some cars. Let's go to Slidell and
8 buy some cars. Let's go back to Lafayette and buy
9 some cars. He said, we can't go there. Why can't
10 we go there? We're not going to put them on a
11 floorplan, we're just going to pay for them. He
12 said, well, we're blacklisted, and we can't go to
13 those auctions anymore.

14 Q. Did he tell you where his understanding
15 came from?

16 A. Of the blacklisting?

17 Q. (Nods head.)

18 A. He had been in business for 22 years. I
19 don't think it's a secret deal.

20 Q. So when did you first learn of the
21 supposed blacklisting of Red Barn?

22 MR. AIREY: Object to the form.

23 THE WITNESS: Huh?

24 MR. AIREY: You can answer.

25 A. That would have been probably in April

1 of '13, in that timeframe right after we tried to
2 reopen and start selling cars again, tried to get
3 some inventory.

4 BY MS. LEDBETTER:

5 Q. Are you familiar with Cox Enterprises,
6 one of the defendants in this lawsuit?

7 A. I used to have Cox cable, but I think
8 that's all part of the same group. At some point
9 in the more recent times, DSC became NextGear,
10 NextGear became part of Manheim and then later I
11 discovered that Manheim was owned by the people
12 that owned Cox cable. And so other than that, I
13 was not aware that Cox was ever involved with
14 anything we were doing.

15 Q. Do you know when DSC became NextGear?

16 A. I heard through Devon that it had
17 happened. And then I heard that they wanted us to
18 sign a new contract, and we didn't. And I would
19 guess a timeframe would have been late '14 or early
20 '15. I don't know for sure. But it was some
21 months after -- after we had had the bankruptcy. I
22 don't remember how long. I didn't pay that much
23 attention to it.

24 Q. So it was your understanding that DSC or
25 NextGear wanted Red Barn to sign a new contract?

1 A. Yeah.

2 Q. Why did they want Red Barn to sign a new
3 contract?

4 A. I don't know.

5 Q. What was your understanding --

6 A. Because you're asking me to tell you what
7 they thought, and I don't have a clue.

8 Q. What was your understanding of why they
9 wanted Red Barn to sign a new contract?

10 A. Because they had changed their name.

11 Q. Were you doing any business with DSC at
12 that point when they wanted you to sign a new
13 contract?

14 A. Well, maybe it was before the bankruptcy.
15 I don't remember. It may have been before the
16 bankruptcy. I just don't remember.

17 Q. But, in any event, you didn't sign a new
18 contract?

19 A. Yeah. It was after they changed their
20 name, they wanted to sign a new contract. But I
21 don't know why they would want to do that if we
22 weren't buying with them anymore, so maybe it was
23 before. I don't know. But we didn't.

24 Q. And do you know when DSC or NextGear
25 became part of Manheim?

1 A. I don't know what the timeframe of that
2 was. I don't remember.

3 Q. And do you know when DSC or NextGear or
4 Manheim started to be owned by Cox?

5 A. I don't have any idea of when that
6 happened.

7 Q. Is there anything that you think Cox
8 Enterprises did wrong?

9 A. How would I know?

10 Q. Well, you sued them.

11 A. Huh?

12 Q. You sued them, so...

13 A. Okay. You're asking me what Cox did and
14 I don't know what Cox did; however, if you have a
15 snake you want to kill, you don't cut the snake in
16 half, you cut the snake at the head. If Cox is the
17 head of this whole scheme, then they would be
18 included in the suit.

19 Q. And what's your basis for thinking that
20 Cox is at the head of or involved in this scheme?

21 A. They own it. They own the companies.
22 Are all of these companies wholly-owned
23 subsidiaries?

24 Q. So your basis for suing them is that they
25 own NextGear?

1 A. We filed a suit. The attorneys
2 determined the appropriate defendants in that suit
3 for reasons that we have not discussed. Now you're
4 asking me to get into the mind of my attorneys,
5 which I can't do; you're asking me to get in the
6 mind of Cox, which I can't do; and so I can't
7 legitimately answer your question because I don't
8 know.

9 Q. And that's fair enough. I guess what I'm
10 asking for is what your understanding is of what
11 Cox did, Cox Enterprises did that you think was
12 wrong. Is there anything other than owning
13 NextGear?

14 A. Here again, you're asking me to have a --
15 speak to knowledge that I do not have.

16 Q. So you don't know?

17 A. I don't know. I can't tell you.

18 Q. That's fine. That's -- I mean, if that's
19 the answer, that's the answer.

20 A. Okay.

21 Q. Are you familiar with Cox Automotive?

22 A. No.

23 Q. So would it be fair to say that you're
24 not aware of anything specific that they did wrong?

25 A. I'm not aware of their involvement. I'm

1 not aware of what they did or didn't do. I'm not
2 aware of -- here again, I can't answer that
3 question because I don't have any knowledge to
4 answer it with.

5 Q. And are you familiar with John Wick?

6 A. Who?

7 Q. John Wick.

8 A. Who is John Wick?

9 Q. I take it you're not familiar with him?

10 A. No.

11 Q. And so you don't know of anything that
12 he --

13 A. Wick.

14 Q. -- would have done that was wrong?

15 A. Wick. Was he the guy -- did he work for
16 DSC?

17 Q. He's one of the defendants in the
18 lawsuit.

19 A. Yeah. But he's -- he's some guy over
20 programs or something.

21 Q. Okay.

22 A. Yeah. His name was in the deposition, I
23 think. I think his name -- I think he -- I've
24 heard of him. He's with NextGear?

25 Q. Uh-huh.

1 A. Okay.

2 Q. And are you aware of anything that you
3 would say he has done wrong?

4 A. I don't know what he has done.

5 MS. LEDBETTER: Do you-guys want to
6 take a break?

7 MR. AIREY: You want to take a
8 break? Yeah, that sounds good.

9 (Brief recess taken.)

10 BY MS. LEDBETTER:

11 Q. All right. Mr. Richardson, I wanted to
12 ask you some questions about the damages claims in
13 this case. What was Red Barn's net income
14 immediately prior to the flood in August of this
15 year?

16 MR. AIREY: Object to the form. You
17 mean --

18 A. I'm not sure what you're asking.

19 MR. AIREY: Do you mean like monthly
20 up to that point in the year?

21 MS. LEDBETTER: Yeah.

22 BY MS. LEDBETTER:

23 Q. What was your income for 2016, January
24 through, I guess, July of 2016?

25 A. 2016, I'm not sure at this point. It

1 wasn't very much because we -- we had some off
2 stuff this year. Now, in 2012 our net income
3 before taxes was in the neighborhood of about
4 750,000 dollars. In 2014 there was about 125,000
5 dollars. In 2015 it should come in between 150 and
6 175,000 dollars. We have all those records -- the
7 flood has interrupted our business cycle a little
8 bit. We didn't get everything completed yet.

9 Q. So you said it was not very much in 2016
10 because...

11 A. Well, January is a slow month in the car
12 business. February I think we sold about 22 cars
13 or something like that and in March about 20, April
14 about the same. But in May, June and July -- now,
15 May, June and July were very slow months. The car
16 sales was in the mid to upper teens. Last year in
17 2015 our average sales from January through October
18 was 35 cars a month. So this year we're going to
19 have a -- and then the flood came along, and we're
20 probably going to have a loss this year.

21 Q. Was there any particular reason that May
22 through July was slow?

23 A. It was slow in the whole market. At the
24 auction Devon talked to a lot of the other car
25 dealers and they were having the same issue. And

1 instead of calling the banks wanting them to take
2 the car deal, the banks were calling you wanting a
3 car deal. It was crazy.

4 Q. Was it just the general economy?

5 A. I don't know exactly what caused it, but
6 it was general through the whole Baton Rouge area.

7 Q. Now, you mentioned your income for 2012,
8 2014 and 2015. What was it in 2013? Do you know
9 the net income?

10 A. Don't know.

11 Q. That was the year of the bankruptcy,
12 right?

13 A. Yes.

14 Q. Were you doing business while that
15 bankruptcy was pending?

16 A. We started back, after the bankruptcy, in
17 business as debtor in possession.

18 Q. When was that that you started?

19 A. Huh?

20 Q. When did you start the business back up?

21 A. I think it was in April of '13. We
22 didn't have -- very little inventory because most
23 of it had been confiscated. Is that a good word?
24 So -- oh, well, let's see. '13? We had an
25 operating loss in '13 in the general neighborhood

1 of 450,000 dollars.

2 Q. What about 2011, do you remember the net
3 income then?

4 A. No. And I don't have any records to tell
5 me.

6 Q. And what about 2010, do you have any
7 recollection of what Red Barn's income was that
8 year?

9 A. No.

10 Q. And do you have any records of that year?

11 A. The flood got my records. It wasn't a
12 lot in 2010 because we were just barely getting
13 started. But I don't know what it was. I don't
14 have any idea.

15 Q. Do you have a copy of Red Barn's tax
16 returns?

17 A. No.

18 Q. What happened to those? Was that the
19 flood?

20 A. The flood.

21 Q. Do you know if the CPA that works with
22 Red Barn has copies of those returns?

23 A. I don't know.

24 Q. Do you know if his office was affected by
25 the floods?

1 A. It's not as competitive on a car later in
2 the auction.

3 Q. All right. Any other pecuniary losses
4 that you can think of?

5 A. Not off the top of my head.

6 Q. And what are the consequential damages
7 that Red Barn is claiming against DSC?

8 MR. AIREY: Object to the form.

9 A. As much as we have not been able to
10 actually calculate those damages in several
11 instances, that would not be a question I can
12 answer.

13 BY MS. LEDBETTER:

14 Q. Are there any other damages or losses
15 that Red Barn is asserting that we haven't talked
16 about?

17 MR. AIREY: Object to the form. You
18 can answer.

19 A. Not off the top of my head. I think
20 we've covered most of it.

21 BY MS. LEDBETTER:

22 Q. Did Red Barn make any attempt to reduce
23 the damages that it suffered?

24 A. Yes. We have reduced employees. We have
25 tried to get the cars that we can get at as good a

1 price as we can. We just can't get the other ones
2 that we would like to have. But we still are going
3 to some auctions. We have continued going to
4 Oak View here in Baton Rouge, but that hasn't --
5 hasn't proven to be as satisfactory because one of
6 the major suppliers of cars at that auction has
7 decided to sell the cars themselves now. So the
8 cars that -- that are in our bracket to buy have
9 been shrunk. So we drive to Long Beach,
10 Mississippi to try to buy some cars over there.

11 And then there's ABC auction here in
12 Baton Rouge by the airport that Devon goes to. And
13 so trying to reduce cost to operate at less expense
14 is what we're trying to do to mitigate damages.
15 What we've done is to try to sell the cars at
16 the -- at a good price or more -- more near the
17 retail price than in the past to mitigate the
18 damages to maintain the -- the business.

19 Q. You mentioned that, I guess, a major
20 seller at Oak View Auto Auction decided to sell the
21 cars themselves. What did you mean by that?

22 A. They quit sending them to auction. They
23 just put them on their own lot.

24 Q. And they're selling to retail customers
25 now?

1 A. Pardon?

2 Q. Are they selling to retail customers now?

3 A. Yes.

4 Q. Anything else you can think of that Red
5 Barn has done to attempt to reduce its damages?

6 A. Yes. We have avoided floorplanning.

7 Q. And how has that reduced the damages?

8 A. We don't have to pay that expense
9 anymore. Interest is not the only expense of
10 floorplanning. If you paid the fee to use DSC plus
11 the additional fee for the first curtailment,
12 you're somewhere in the neighborhood of 150, 160
13 dollars per car on expense. By not
14 floorplanning -- assuming other floorplans have
15 similar fees. By not using a floorplanning
16 operation, we can mitigate the damages by operating
17 more efficiently.

18 Q. When did Red Barn stop using the AFC
19 floorplan?

20 A. The same time we stopped using the AFCs.

21 Q. The same time you stopped using DSC?

22 A. Huh?

23 Q. The same time you stopped using DSC?

24 A. DSC, yes. DSC and AFC were on the lot at
25 the same time picking up cars.

1 Q. And were the fees for AFC and DSC pretty
2 similar?

3 A. I'm not familiar with the fees on AFC.

4 Q. So when you mentioned 150 to 160 dollars
5 per car --

6 A. That was DSC's number. And the only
7 reason I know that is because I asked Devon. I
8 said, what are these fees? And he told me.

9 Q. This was marked as Exhibit 16 on Devon
10 London's deposition. And this is the amended
11 bankruptcy petition of Red Barn Motors; is that
12 right?

13 A. Yes.

14 Q. And did you authorize this document to be
15 filed with the bankruptcy court?

16 A. Yes.

17 Q. Have you ever filed for personal
18 bankruptcy at any point?

19 A. Yes.

20 Q. When was that?

21 A. Well, in the 1980s. I'm not sure of the
22 date.

23 Q. Have you ever filed for personal
24 bankruptcy since opening Red Barn Motors?

25 A. No.

1 Q. So take a look at Schedule B of
2 Exhibit 16. And I'm looking at the page. It's
3 Bates numbered RB 00006.

4 A. Six?

5 Q. Yes.

6 A. That's Schedule B?

7 Q. Uh-huh.

8 A. Okay.

9 Q. And towards the bottom of page six it
10 lists an unfiled claim against NextGear
11 Capital/Dealer Services Corporation for unfair
12 trade practices. Do you see that?

13 A. Yes.

14 Q. Is that this case?

15 A. Yes.

16 Q. So you don't have any other unfiled
17 claims against NextGear or DSC, right?

18 A. No.

19 Q. And what are the insurance claims listed
20 right below that?

21 A. That was a --

22 MR. AIREY: (Indicating).

23 THE WITNESS: Yeah, I see that.

24 A. We are the loss payee on insurance for
25 cars that buy here, pay here. This appears to be a

1 claim for someone who totaled a car and were
2 pending insurance payment.

3 Q. So like a car insurance payment?

4 A. Yeah. Well --

5 Q. For the property damage or something like
6 that?

7 A. Yeah.

8 Q. Okay. Looking at the next page, which is
9 RB 0007, it lists DSC vehicles. Is that the DSC
10 collateral?

11 A. Yes.

12 Q. And why was the amount -- or the value
13 unknown?

14 A. Because we were never furnished any
15 printout of the value of the vehicle, the pay-off
16 value, the amount received when they sold the
17 vehicle and the balance on that vehicle. And so we
18 didn't know what that number was.

19 Q. Did you contact NextGear shortly after
20 you filed for bankruptcy to ask for a detailed
21 report of Red Barn's activity?

22 A. Yes.

23 Q. And what was the result of that?

24 A. We got no report.

25 Q. Why were you calling to ask for it?

1 A. Pardon?

2 Q. Why were you calling to ask for it?

3 A. To find out where we were relative to
4 what our -- what our remaining payment was to them,
5 what our remaining balance due to them was. And we
6 never got the report.

7 Q. Do you know if a report was ever sent to
8 your bankruptcy attorney?

9 A. Not to my knowledge. NextGear never
10 responded to anything in the bankruptcy, the
11 notices, no proof of claim, no telephone calls, no
12 card from Hawaii, nothing. We got -- there was
13 total silence.

14 Q. Turn to the next page, page eight. This
15 is Schedule D of the bankruptcy, right?

16 A. Schedule D, secured claims.

17 Q. So this shows that AFC had a 50-thousand
18 dollar claim with 13,592 being unsecured. Do you
19 see that?

20 A. Yes.

21 Q. Do you have any reason to think that was
22 inaccurate at the time?

23 A. No. I don't think it was necessarily
24 inaccurate. I just -- I can't tell you exactly --
25 well, just reading, it says that we had certain